

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

CENTOCOR, INC. and NEW YORK
UNIVERSITY

,
Plaintiffs,

v.

ABBOTT LABORATORIES, ABBOTT
BIORESEARCH CENTER, INC., and
ABBOTT BIOTECHNOLOGY LTD.,

Defendants.

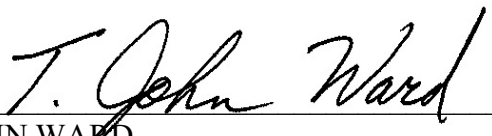
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CIVIL ACTION NO. 2:07-CV-139 (TJW)

ORDER

Before the court is Defendant's Motion to Compel Discovery Responses and Compliance with Patent Rule 3-1 By confirming the March 18, 1991 Priority Date for the Asserted Claims of the Patents-in-Suit (Dkt. No. 118). Patent Rule 3-1(e) requires Plaintiffs to disclose "the priority date to which each asserted claim allegedly is entitled." Plaintiffs disclose they "may rely for priority on the March 19, 1991, application or on a later-filed application." Defendants ask the court to compel Plaintiffs to chose one priority date, thereby foreclosing reliance on any later filed application. Defendants have cited no law supporting the relief they request. The court declines to require such of Plaintiffs at this stage in the litigation. The motion, therefore, is DENIED without prejudice to re-urging at a later, more appropriate, time in litigation when the parties' positions have been further solidified.

SIGNED this 20th day of February, 2009.



T. JOHN WARD
UNITED STATES DISTRICT JUDGE

